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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/084,765	02/26/2002	Gordon J. Kocur	S63.2-10259	3493

490 7590 12/23/2004

VIDAS, ARRETT & STEINKRAUS, P.A.  
6109 BLUE CIRCLE DRIVE  
SUITE 2000  
MINNETONKA, MN 55343-9185

EXAMINER

O'CONNOR, CARY E

ART UNIT PAPER NUMBER

3732

DATE MAILED: 12/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/084,765

**Applicant(s)**

KOCUR

**Examiner**

Cary E. O'Connor

**Art Unit**

3732

**– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –  
Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 30-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1 and 33-35 is/are allowed.
- 6) ☒ Claim(s) 30-32 and 36-44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                                    | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 30, 36-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Euteneur et al (5,989,280) in view of Ding (5,899,935). Euteneur shows an expandable stent 17 comprising an expandable framework and at least one stent retaining segment 60 disposed about the framework and constructed to fail in the body by degradation of at least a portion of the band. The stent retaining segment maintains the framework in a less than fully expanded configuration and can have a narrowing that acts as a fatigue point (col. 7, lines 39-41) or has at least one weakened region (perforations) 64 to facilitate failure (col. 7, lines 52-55). Euteneur does not disclose that at least one of the retaining segments having a coating thereon comprising at least one therapeutic agent which. Ding shows a stent which may have restraining means thereon (paragraph bridging columns 3 and 4) and may further include a therapeutic agent (column 4, lines 3-8) which is released upon degradation of the retaining means. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a coating comprising a therapeutic agent on the restraining segments of Euteneur, in view of Ding, in order to enhance the therapeutic properties of the stent. As to claims 34 and 37, note that the therapeutic agent may comprise a anti-thrombic agent (column 4,

lines7-8). As to claims 35 and 38, note that the therapeutic agent may comprise an anti-coagulant (column 4, line 4).

Claims 31, 32, 39-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Solar (5,403,341) in view of Ding (5,899,935). Solar shows an expandable stent 10 comprising an expandable framework and at least one biostable stent retaining segment 40 disposed about the framework and constructed to fail in the body due to a pattern of perforations (see column 8, lines 20-24). Solar does not disclose that at least one of the retaining segments having a coating thereon comprising at least one therapeutic agent. Ding shows a stent which may have restraining means thereon (paragraph bridging columns 3 and 4) and may further include a therapeutic agent (column 4, lines 3-8) which is released upon degradation of the retaining means. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a coating comprising a therapeutic agent on the restraining segments of Solar, in view of Ding, in order to enhance the therapeutic properties of the stent. As to claims 40 and 43, note that the therapeutic agent may comprise a anti-thrombic agent (column 4, lines7-8). As to claims 41 and 44, note that the therapeutic agent may comprise an anti-coagulant (column 4, line 4).

#### ***Allowable Subject Matter***

Claims 1, 33-35 are allowed.

#### ***Response to Arguments***

Applicant's arguments filed July 8, 2004 have been fully considered but they are not persuasive. Applicant argues that neither Euteneuer nor Solar do not teach or

suggest a pattern of perforations...to modify the expansion characteristics of the tubular section. It is not understood how applicant's perforations act in a different manner than Euteneuer' perforations 64. Both devices have a failure area which fails when a certain outward force is exerted on the region (applicant's device) or upon dissolution of the perforations (Euteneuer). Both devices include an area where the expansion characteristics are different than the remainder of the device. The area of perforations of Euteneuer is less thick than the remainder of the device (column 7, lines 26-34) and would inherently exhibit a greater tendency to expand. As to Solar, the examiner finds no difference in the way applicant's perforations (referred to in the specification as "fatigue points) tear and the way Solar's perforations tear.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cary E. O'Connor whose telephone number is 571-272-4715. The examiner can normally be reached on M-Th 7:00-3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Cary E. O'Connor  
Primary Examiner  
Art Unit 3732

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